IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON Respondent, v. FLETCHER KEITH MOORE, Appellant.	)	DIVISION ONE No. 61711-7-I UNPUBLISHED OPINION FILED: June 8, 2009

Dwyer, J. — Fletcher Moore appeals from an order imposing 20 days jail time for each of four violations of conditions following a community placement hearing. He contends that the trial court exceeded its authority by imposing jail time for three violations covered by a stipulated agreement without finding that he failed to comply with administrative sanctions. Because the question presented is moot, we dismiss the appeal.

FACTS

Fletcher Moore entered a guilty plea to first degree child molestation in 1995. The trial court sentenced him to 150 months confinement followed by 24 months on community placement. Moore was released from custody to community placement on February 6, 2006.

On January 3, 2008, Moore signed a stipulated agreement with the Department of Corrections (DOC) admitting that he willfully violated his

conditions of supervision by:

1. Failing to report as directed since 11/15/07.
2. Failing to advise of a change in employment since 12/1/07.
3. Possessing alcoholic beverages on two occasions in October 2007.

He also agreed to comply with the following sanctions:

1. Report daily and in person to CCO Curran for 60 days or until full-time employment is obtained.
2. Participate in the Getting It Right program at CJC beginning 1/9/08 at 9:00 AM.
3. Submit to polygraph 1/7/08 at 10:00 AM.

On January 15, 2008, Moore's CCO filed a notice of violation and requested a hearing. The report details Moore's history on community placement, lists the three previously described violations and one additional violation,[1] but does not mention the January 3 stipulated agreement and sanctions.

At a hearing on April 8, 2008, the prosecutor stated that Moore had entered a stipulated agreement but "because he did not or was not able to comply with [DOC's] sanctions . . . that agreement has been rescinded," and asked "that the Court take up all four of those allegations at this time." Moore objected to the consideration of the three allegations covered by the stipulated agreement, arguing that there was no evidence that he failed to comply with the sanctions. As authority, Moore's attorney quoted RCW 9.94A.634(3)(a), which provides in pertinent part, "[I]f the offender and the department make a stipulated agreement, the department may impose sanctions . . . . If the offender fails to

[1] Moore provided a urine sample on January 3, 2008, after denying that he had consumed alcohol. The sample tested positive for alcohol. Moore does not challenge the court's imposition of 20 days confinement as a sanction for this violation.

comply with the sanction administratively imposed by the department, the court may take action regarding the original noncompliance." Moore claimed that he was in compliance with the administrative sanctions until he was taken into custody on January 14.

The trial court did not make findings as to whether Moore failed to comply with the administrative sanctions listed in the stipulated agreement. The trial court determined that Moore willfully committed each of the four alleged violations and imposed 20 days each for a total of 80 days. The court gave Moore credit for the time he had served awaiting the hearing, approximately 84 days.

Moore appeals.

DISCUSSION

The State contends that the appeal is moot because Moore has already served the entire sanction and this court cannot provide any relief. "A case is moot if a court can no longer provide effective relief." Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984).

Moore contends that this court can provide relief by reversing the sanctions imposed on the three violations covered by the stipulated agreement and remand, directing the court to give him credit for the 60 days served under the erroneous order against any future confinement time. While it is true that Moore must receive credit *against his prison term* for all jail time served exclusively on the underlying offense while on community placement, his claim

that he is entitled to credit *against any potential future confinement time* on the same charge is frivolous and is not supported by the cases he cites.

In re Phelan, 97 Wn.2d 590, 592, 597, 647 P.2d 1026 (1982), requires that "credit against [a] maximum prison sentence" must be given for time served while awaiting a probation revocation hearing "only if the jail time served was exclusively on the principal underlying charge." State v. Phelan, 100 Wn.2d 508, 515, 671 P.2d 1212 (1983), explained that postsentence probationary jail time was to be credited against maximum and mandatory minimum terms as well as discretionary minimum terms under the indeterminate sentencing scheme prior to the Sentencing Reform Act of 1981, chapter 9.94A RCW. In re Personal Restraint of Reifschneider, 130 Wn. App. 498, 123 P.3d 496 (2005), and In re Personal Restraint of Albritton, 143 Wn. App. 584, 180 P.3d 790 (2008), involved the calculation of good time credits for inmates sentenced under the drug offender sentencing alternative (DOSA) statute, terminated from the DOSA program and reincarcerated to serve their full sentences. In this context, offenders are entitled to credit against the total sentence for time served on the underlying conviction while on probation or community custody. Albritton, 143 Wn. App. at 595. In State v. Linerud, 147 Wn. App. 944, 951, 197 P.3d 1224 (2008), this court held that the sentencing court must limit the total sentence imposed, including confinement and community custody, to the statutory maximum.

Here, the sentencing court imposed 150 months confinement and 24

months of community custody following Moore's conviction for a crime with a statutory maximum term of life. None of the cases he cites requires or allows the court to give him credit for jail time erroneously served for community placement violations against potential future violations he has not yet committed. Because Moore fails to demonstrate that this court could provide effective relief, his claim is moot.

In the alternative, Moore argues that we may address his challenge because it involves matters of continuing and substantial public interest. In re Pers. Restraint of Mines, 146 Wn.2d 279, 285, 45 P.3d 535 (2002). When determining whether a case involves the requisite public interest, we consider (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination to provide future guidance to public officers, and (3) the likelihood that the question will recur. Mines, 146 Wn.2d at 285 (quoting Sorenson v. City of Bellingham, 80 Wn.2d 547, 558, 496 P.2d 512 (1972)).

Although questions regarding the propriety of sentence modifications are public in nature, because the statute at issue is clear the error here is not likely to recur. RCW 9.94A.634(3)(a)(i) provides that in the event of a failure to comply with the conditions of a sentence, an offender may enter a stipulated agreement with the DOC and submit to sanctions. Under RCW 9.94A.634(3)(a)(ii), if the court is not satisfied with the administrative sanctions, the court may schedule a hearing within 15 days to modify the sanctions and the offender may withdraw from the agreement. Absent such a hearing, RCW

9.94A.634(3)(a)(iii) indicates that the court may take action regarding the original noncompliance only "[i]f the offender fails to comply with the sanction administratively imposed by the department." Thus, the statute clearly requires a court to determine whether the offender has failed to comply with the administrative sanctions before taking action on violations of conditions covered by a stipulated agreement.

Here, the trial court did not make clear findings as to whether Moore failed to comply with the administrative sanctions and Moore argues that the State did not present sufficient evidence to support a finding that he failed to comply. Given the factual basis of the alleged error and the clarity of the statute, it does not appear likely that the question will recur. Under these circumstances, this matter is properly dismissed as moot.[2]

Dismissed.

Dwyer, A.C.J.

WE CONCUR:

Schindler, C.J. Ajid, J.

[2] "Generally, a case presenting a moot issue on appeal will be dismissed." City of Seattle v. Johnson, 58 Wn. App. 64, 66-67, 791 P.2d 266 (1990).